

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103**

In the Matter of:	:	
	:	
Whitford Corporation	:	U.S. EPA Docket No. EPCRA-03-2019-0119
47 Park Avenue	:	
Elverson, Pennsylvania 19520,	:	Proceeding under EPCRA §§ 313 and,
	:	325(c), 42 U.S.C. §§ 11023 and 11045(c)
Respondent.	:	
	:	
47 Park Avenue	:	
Elverson, Pennsylvania 19520,	:	
	:	
Facility.	:	
	:	
	:	
	:	

U.S. EPA-REGION 3-RHC
FILED-18SEP2019PM2:58

CONSENT AGREEMENT

PRELIMINARY STATEMENT

1. This Consent Agreement is entered into by the Director of the Enforcement & Compliance Assurance Division, U.S. Environmental Protection Agency, Region III (“Complainant”) and Whitford Corporation (“Respondent”) (collectively the “Parties”), pursuant to Sections 313 and 325(c) of the Emergency Planning and Community Right-to-Know Act of 1986 (“EPCRA”), 42 U.S.C. §§ 11023 and 11045(c), the regulations implementing EPCRA § 313, as set forth at 40 C.F.R. Part 372, and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits (“Consolidated Rules of Practice”), 40 C.F.R. Part 22. EPCRA authorizes the Administrator of the U.S. Environmental Protection Agency to assess penalties and undertake other actions required by this Consent Agreement. The Administrator has delegated this authority to the Regional Administrator who, in turn, has delegated it to the Complainant. This Consent Agreement and the attached Final Order (hereinafter jointly referred to as the “CAFO”) resolve Complainant’s civil penalty claims against Respondent under EPCRA § 313, 42 U.S.C. § 11023, and implementing regulations promulgated thereunder (or the “Act”) for the violations alleged herein.
2. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant hereby simultaneously commences and resolves this administrative proceeding.

JURISDICTION

3. The U.S. Environmental Protection Agency has jurisdiction over the above-captioned matter, as described in Paragraph 1, above.
4. The Consolidated Rules of Practice govern this administrative adjudicatory proceeding pursuant to 40 C.F.R. § 22.1(a)(8).

GENERAL PROVISIONS

5. For purposes of this proceeding only, Respondent admits the jurisdictional allegations set forth in this CAFO.
6. Except as provided in Paragraph 5, above, Respondent neither admits nor denies the specific factual allegations set forth in this Consent Agreement.
7. Respondent agrees not to contest the jurisdiction of EPA with respect to the execution of this Consent Agreement, the issuance of the attached Final Order, or the enforcement of this CAFO.
8. For purposes of this proceeding only, Respondent hereby expressly waives its right to contest the allegations set forth in this CAFO and waives its right to appeal the accompanying Final Order.
9. Respondent consents to the assessment of the civil penalty stated herein, to the issuance of any specified compliance order herein, and to any conditions specified herein.
10. Respondent shall bear its own costs and attorney's fees in connection with this proceeding.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

11. In accordance with 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules of Practice, Complainant alleges and adopts the Findings of Fact and Conclusions of Law set forth immediately below.
12. EPCRA Section 313(a), 42 U.S.C. § 11023(a), requires the owner or operator of any facility that, in any calendar year, manufactures, processes or otherwise uses a toxic chemical listed under EPCRA Section 313(c), 42 U.S.C. § 11023(c), in quantities exceeding a regulatory threshold established under EPCRA Section 313(f), 42 U.S.C. § 11023(f), to complete and submit a toxic chemical release inventory report (i.e., "Form R" or "Form A") for each such listed toxic chemical. Pursuant to EPCRA Section 313(a), 42 U.S.C. § 11023(a), each required Form R or Form A must include the information required under Section 313(g) of EPCRA, 42 U.S.C. § 11023(g), and must be submitted to EPA and to the designated State agency by July 1 of the year following the year for which such toxic inventory report is required.
13. EPCRA Section 313(b), 42 U.S.C. § 11023(b), and 40 C.F.R. § 372.22 provide, in

relevant and applicable part, that a facility which meets the following criteria for a calendar year is a “covered facility” for that calendar year and must report under 40 C.F.R. § 372.30: [a] the facility has 10 or more full-time employees; [b] the facility is in a Standard Industrial Classification (“SIC”) (as in effect on January 1, 1987) major group or industrial code listed in 40 C.F.R. § 372.23(a), for which the corresponding North American Industrial Classification System (“NAICS”) (as in effect on January 1, 2017, for reporting year 2018 and thereafter) subsector and industry codes are listed in 40 C.F.R. § 372.23(b) and (c) by virtue of the fact that the facility is an establishment with a primary SIC major group or industry code listed in 40 C.F.R. § 372.23(a), or a primary NAICS subsector or industry code listed in 40 C.F.R. § 372.23(b) or 40 C.F.R. § 372.23(c); and [c] the facility manufactured (including imported), processed, or otherwise used a toxic chemical in excess of an applicable threshold quantity of that chemical set forth in 40 C.F.R. §§ 372.25, 372.27, or 375.28.

14. 40 C.F.R. § 372.30(a) provides, in relevant part, that for each toxic chemical known by the owner or operator to be manufactured (including imported), processed, or otherwise used in excess of an applicable threshold quantity in 40 C.F.R. § 372.25, § 372.27, or § 372.28 at its covered facility for a calendar year, the owner or operator must submit to EPA and to the State in which the facility is located a completed EPA Form R (EPA Form 9350-1) or Form A (EPA Form 9350-2) in accordance with the instructions referred to in 40 C.F.R. Part 372, Subpart E.
15. 40 C.F.R. § 372.30(d) provides, in relevant part, that: “[e]ach report under this section for activities involving a toxic chemical that occurred during a calendar year at a covered facility must be submitted on or before July 1 of the next year.”
16. Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3 define “facility” to mean, in relevant part, all buildings, equipment, structures, and other stationary items which are located on a single site and are owned or operated by the same person.
17. Section 329(7) of EPCRA, 42 U.S.C. § 11049(7), defines “person” to include any corporation.
18. Respondent is incorporated in the Commonwealth of Pennsylvania and is a “person” as defined in Section 329(7) of EPCRA, 42 U.S.C. § 11049(7).
19. Respondent owns and operates, and at the time of the violation alleged herein, owned and operated a specialty high performance coatings manufacturing plant located at 47 Park Avenue, Elverson, Pennsylvania 19520 (“Facility”).
20. Respondent’s Facility is a “facility” as defined in Section 329(4) of EPCRA, 42 U.S.C. § 11049(4), and 40 C.F.R. § 372.3.
21. During calendar years 2016 and 2017, Respondent employed 10 or more full-time employees at the Facility.
22. During calendar years 2016 and 2017, the Facility had a SIC code of 2851,

corresponding to paints, varnishes, lacquers, enamels, and allied products.

23. On November 16, 2018, a representative of EPA Region III conducted a Compliance Evaluation Inspection (CEI) at the Facility.

Count I – Methyl Isobutyl Ketone 2016

24. The allegations of Paragraphs 1 through 23, above, are incorporated by reference as though fully set forth herein.
25. Methyl isobutyl ketone is a “toxic chemical” as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), 40 C.F.R. § 372.3, and listed as a “toxic chemical” in 40 C.F.R. § 372.65.
26. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for methyl isobutyl ketone processed at a facility during calendar year 2016 was 25,000 pounds.
27. Respondent processed more than 25,000 pounds of methyl isobutyl ketone at the Facility during calendar year 2016.
28. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2017, a completed Form R or Form A for the methyl isobutyl ketone processed at the Facility during calendar year 2016.
29. Respondent filed a complete Form R for the toxic chemical, methyl isobutyl ketone, processed at the Facility during calendar year 2016 with the Administrator of EPA and the Commonwealth of Pennsylvania on or about December 5, 2018.
30. Respondent’s failure to timely file a complete Form R or Form A to EPA and the Commonwealth of Pennsylvania for the toxic chemical, methyl isobutyl ketone, processed at the Facility during calendar year 2016, by July 1, 2017, constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023.

Count II – Methyl Isobutyl Ketone 2017

31. The allegations of Paragraphs 1 through 30, above, are incorporated by reference as though fully set forth herein.
32. Methyl isobutyl ketone is a “toxic chemical” as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), 40 C.F.R. § 372.3, and listed as a “toxic chemical” in 40 C.F.R. § 372.65.
33. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for methyl isobutyl ketone processed at a facility during calendar year 2017 was 25,000 pounds.
34. Respondent processed more than 25,000 pounds of methyl isobutyl ketone at the

Facility during calendar year 2017.

35. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2018, a completed Form R or Form A for the methyl isobutyl ketone processed at the Facility during calendar year 2017.
36. Respondent filed a complete Form R for the toxic chemical, methyl isobutyl ketone, processed at the Facility during calendar year 2017 with the Administrator of EPA and the Commonwealth of Pennsylvania on or about December 5, 2018.
37. Respondent's failure to timely file a complete Form R or Form A to EPA and the Commonwealth of Pennsylvania for the toxic chemical, methyl isobutyl ketone, processed at the Facility during calendar year 2017, by July 1, 2018, constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023.

Count III – 1,2,4-Trimethylbenzene 2017

38. The allegations of Paragraphs 1 through 37, above, are incorporated by reference as though fully set forth herein.
39. 1,2,4-Trimethylbenzene is a "toxic chemical" as defined in EPCRA §§ 313(c) and 329(10), 42 U.S.C. §§ 11023(c) and 11049(10), 40 C.F.R. § 372.3, and listed as a "toxic chemical" in 40 C.F.R. § 372.65.
40. As set forth in Section 313(f)(1)(B)(iii) of EPCRA, 42 U.S.C. § 11023(f)(1)(B)(iii), and 40 C.F.R. § 372.25, the reporting threshold amount for 1,2,4-trimethylbenzene processed at a facility during calendar year 2017 was 25,000 pounds.
41. Respondent processed more than 25,000 pounds of 1,2,4-trimethylbenzene at the Facility during calendar year 2017.
42. Pursuant to EPCRA § 313(a), 42 U.S.C. § 11023(a), Respondent was required to submit to the Administrator of EPA and the Commonwealth of Pennsylvania by July 1 of 2018, a completed Form R or Form A for the 1,2,4-trimethylbenzene processed at the Facility during calendar year 2017.
43. Respondent filed a complete Form R for the toxic chemical, 1,2,4-trimethylbenzene, processed at the Facility during calendar year 2017 with the Administrator of EPA and the Commonwealth of Pennsylvania on or about December 5, 2018.
44. Respondent's failure to timely file a complete Form R or Form A to EPA and the Commonwealth of Pennsylvania for the toxic chemical, 1,2,4-trimethylbenzene, processed at the Facility during calendar year 2017, by July 1, 2018, constitutes one violation of Section 313 of EPCRA, 42 U.S.C. § 11023.

CIVIL PENALTY

45. In settlement of EPA's claims for civil penalties for the violations alleged in this

Consent Agreement, Respondent consents to the assessment of a civil penalty in the amount of THIRTY-NINE THOUSAND DOLLARS (\$39,000.00) which Respondent shall be liable to pay in accordance with the terms set forth below.

46. The civil penalty is based upon EPA's consideration of a number of factors, including the penalty criteria ("statutory factors") set forth in EPCRA § 325(b)(1)(C), 42 U.S.C. § 11045(b)(1)(C), which include the seriousness of the violation and any good faith efforts to comply with the applicable requirements. These factors were applied to the particular facts and circumstances of this case with specific reference to *Enforcement Response Policy for Section 313 of the Emergency Planning and Community Right-to-Know Act (1986)* (April 12, 2001). Complainant has also considered the Adjustment of Civil Penalties for Inflation, 40 C.F.R. Part 19, and the appropriate *Adjustment of Civil Monetary Penalties for Inflation*, pursuant to 40 C.F.R. Part 19, and the applicable EPA memoranda addressing EPA's civil penalty policies to account for inflation. The settlement in this proceeding is consistent with the provisions and objectives of EPCRA § 313, 42 U.S.C. § 11023, and 40 C.F.R. Part 372.
47. Payment of the civil penalty amount, and any associated interest, administrative fees, and late payment penalties owed, shall be made by either cashier's check, certified check or electronic wire transfer, in the following manner:
- a. All payments by Respondent shall include reference to Respondent's name and address, and the Docket Number of this action, *i.e.*, EPCRA-03-2019-0119;
 - b. All checks shall be made payable to the "United States Treasury";
 - c. All payments made by check and sent by regular mail shall be addressed and mailed to:

U.S. Environmental Protection Agency
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000
 - d. For additional information concerning other acceptable methods of payment of the civil penalty amount see:

<https://www.epa.gov/financial/makepayment>
 - e. A copy of Respondent's check or other documentation of payment of the penalty using the method selected by Respondent for payment shall be sent simultaneously to:

T. Chris Minshall
Sr. Assistant Regional Counsel
U.S. EPA, Region III (3RC30)
1650 Arch Street
Philadelphia, PA 19103-2029
Minshall.Chris@epa.gov

48. Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payment of the penalty as specified herein shall result in the assessment of late payment charges including interest, penalties and/or administrative costs of handling delinquent debts.
49. Payment of the civil penalty is due and payable immediately upon receipt by Respondent of a true and correct copy of the fully executed and filed CAFO. Receipt by Respondent or Respondent's legal counsel of such copy of the fully executed CAFO, with a date stamp indicating the date on which the CAFO was filed with the Regional Hearing Clerk, shall constitute receipt of written initial notice that a debt is owed EPA by Respondent in accordance with 40 C.F.R. § 13.9(a).
50. INTEREST: In accordance with 40 C.F.R § 13.11(a)(1), interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of the fully executed and filed CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalties that is paid within thirty (30) calendar days after the date on which such interest begins to accrue. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R § 13.11(a).
51. ADMINISTRATIVE COSTS: The costs of the EPA's administrative handling of overdue debts will be charged and assessed monthly throughout the period a debt is overdue. 40 C.F.R. § 13.11(b). Pursuant to Appendix 2 of EPA's *Resources Management Directives – Case Management*, Chapter 9, EPA will assess a \$15.00 administrative handling charge for administrative costs on unpaid penalties for the first thirty (30) day period after the payment is due and an additional \$15.00 for each subsequent thirty (30) days the penalty remains unpaid.
52. LATE PAYMENT PENALTY: A late payment penalty of six percent per year will be assessed monthly on any portion of the civil penalty that remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).
53. Failure by the Respondent to pay the EPCRA civil penalty assessed by the Final Order in accordance with the terms of this CAFO may subject Respondent to a civil action to collect the assessed penalties, plus interest, pursuant to Section 109 of CERCLA, 42 U.S.C. § 9609, and Section 325 of EPCRA, 42 U.S.C. § 11045. In any such collection action, the validity, amount and appropriateness of the penalty shall not be subject to review.
54. Respondent agrees not to deduct for federal tax purposes the civil penalty assessed in this CAFO.

GENERAL SETTLEMENT CONDITIONS

55. By signing this Consent Agreement, Respondent acknowledges that this CAFO will be available to the public and represents that, to the best of Respondent's knowledge and belief, this CAFO does not contain any confidential business information or personally identifiable information from Respondent.
56. Respondent certifies that any information or representation it has supplied or made to EPA concerning this matter was, at the time of submission true, accurate, and complete and that there has been no material change regarding the truthfulness, accuracy or completeness of such information or representation. EPA shall have the right to institute further actions to recover appropriate relief if EPA obtains evidence that any information provided and/or representations made by Respondent to the EPA regarding matters relevant to this CAFO, including information about respondent's ability to pay a penalty, are false or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action that EPA may have, civil or criminal, under law or equity in such event. Respondent and its officers, directors and agents are aware that the submission of false or misleading information to the United States government may subject a person to separate civil and/or criminal liability.

CERTIFICATION OF COMPLIANCE

57. Respondent certifies to EPA, upon personal investigation and to the best of its knowledge and belief, that it currently is in compliance with regard to the violations alleged in this Consent Agreement.

OTHER APPLICABLE LAWS

58. Nothing in this CAFO shall relieve Respondent of its obligation to comply with all applicable federal, state, and local laws and regulations, nor shall it restrict EPA's authority to seek compliance with any applicable laws or regulations, nor shall it be construed to be a ruling on the validity of any federal, state or local permit. This CAFO does not constitute a waiver, suspension or modification of the requirements of EPCRA or any regulations promulgated thereunder.

RESERVATION OF RIGHTS

59. This CAFO resolves only EPA's claims for civil penalties for the specific violations alleged against Respondent in this CAFO. EPA reserves the right to commence action against any person, including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. This settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice, 40 C.F.R. § 22.18(c). EPA reserves any rights and remedies available to it under EPCRA, the regulations promulgated thereunder and any other federal law or regulation to enforce the terms of this CAFO after its effective date.

EXECUTION /PARTIES BOUND

60. This CAFO shall apply to and be binding upon the EPA, the Respondent and the officers, directors, employees, contractors, successors, agents and assigns of Respondent. By his or her signature below, the person who signs this Consent Agreement on behalf of Respondent is acknowledging that he or she is fully authorized by the Respondent to execute this Consent Agreement and to legally bind Respondent to the terms and conditions of this CAFO.

EFFECTIVE DATE

61. The effective date of this CAFO is the date on which the Final Order, signed by the Regional Administrator of EPA, Region III, or his/her designee, the Regional Judicial Officer, is filed along with the Consent Agreement with the Regional Hearing Clerk pursuant to the Consolidated Rules of Practice.

ENTIRE AGREEMENT

62. This CAFO constitutes the entire agreement and understanding between the Parties regarding settlement of all claims for civil penalties pertaining to the specific violations alleged herein and there are no representations, warranties, covenants, terms, or conditions agreed upon between the Parties other than those expressed in this CAFO.

In Re: Whitford Corporation
EPA Docket No. EPCRA-03-2019-0119

For Respondent: Whitford Corporation

Date: 9/3/19


By: 

Kevin Braun
President

For the Complainant:

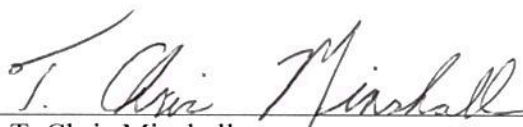
After reviewing the Consent Agreement and other pertinent matters, I, the undersigned Director of the Enforcement and Compliance Assurance Division of the United States Environmental Protection Agency, Region III, agree to the terms and conditions of this Consent Agreement and recommend that the Regional Administrator, or his/her designee, the Regional Judicial Officer, issue the attached Final Order.

Date: SEP 18 2019

By: 
Karen Melvin
Director, Enforcement and Compliance
Assurance Division
U.S. EPA – Region III
Complainant

Attorney for Complainant:


Date: 9/13/2019

By: 
T. Chris Minshall
Sr. Assistant Regional Counsel
U.S. EPA – Region III

This Final Order constitutes the final Agency action in this proceeding. This Final Order shall not in any case affect the right of the Agency or the United States to pursue appropriate injunctive or other equitable relief, or criminal sanctions for any violations of the law. This Final Order resolves only those causes of action alleged in the Consent Agreement and does not waive, extinguish or otherwise affect Respondent's obligation to comply with all applicable provisions of RCRA and the regulations promulgated thereunder.

The effective date of the attached Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

Sept. 18, 2019
Date



Joseph J. Lisa
Regional Judicial and Presiding Officer
U.S. EPA Region III

